IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1140 of 2007

Razia Begum .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Chennai Police, Chennai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Raja alias Raja Mohamed, son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Challenging the abovesaid detention, the mother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the repsondents to produce the detenu before this Court, now confined in Central Prison, Puzhal, Chennai and to set him at liberty, and to call for the records pertaining to the order of detention vide Memo No.258/BDFGISSV/2007, dated 21.6.2007 passed by the second respondent and to set aside the same.

3.1. The order of detention dated 21.6.2007 was passed on the basis of ground case in Crime No.889 of 2007 for alleged commission of offences under Sections 392, 397 and 506(ii) IPC, complaint of which was lodged by one Dinesh. According to the complainant, on 6.6.2007, at 1900 hours, while he was returning after meeting his friend, at the junction of Madhavaram High Road and Pallavan Salai near Don Bosco School, the detenu wrongfully restrained him and asked him to handover the money and as the complainant refused to handover the money, the detenu and one Kumaresan threatened and kicked him, due to which the complainant fell down. The detenu inserted his hand into the shirt pocket of the complainant and took away Rs.500/- at the point of knife. The complainant raised hue and cry, and on hearing the same the public nearby came for his rescue. Noticing the same the detenu and Kumaresan picked up stones from the road side and pelted the same against them. The public ran for safer places out of fear of danger to their lives and properties. Taking advantage of the situation, the detenu and Kumaresan escaped. Based on the complaint given by Dinesh, a case, as stated above, was registered. The Inspector of Police conducted investigation and arrested the detenu.

3.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu, viz.,

i. Crime No.1220 of 2006 registered on the file of Thiru Vi Ka Nagar Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 1.8.2006;

ii. Crime No.274 of 2007 registered on the file of MKB Nagar Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 10.4.2007;

iii. Crime No.856 of 2007 registered on the file of Peravellore Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 17.4.2007;

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iv. Crime No.516 of 2007 registered on the file of Choolaimedu Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 26.4.2007;

v. Crime No.234 of 2007 registered on the file of Aminjikarai Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 28.4.2007; and

vi. Crime No.887 of 2007 registered on the file of Thiru Vi Ka Police Station for the offence punishable under Section 379 IPC with reference to the occurrence said to have taken place on 26.5.2007.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

4. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that six adverse cases relate to the offence punishable under Section 379 I.P.C., and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

5. Mr.N.R.Elango, learned Additional Public Prosecutor supporting the order of detention contends that the detenu is habitually committing crime and has also acted in a manner prejudicial to the maintenance of public order and his detention is justified.

6. We have perused the entire materials placed before us and heard the submissions of both sides.

7. With regard to the submission that the detenu is habitually committing crime, a reference to the decision of the Apex Court in R. Kalavathi v. State of T.N.,(2006) 6 SCC 14 would be relevant:

"10. Habitual: the meaning of the words “habit” and “habitual” as given in Advanced Law Lexicon , (3rd Edn.) by P. Ramanatha Aiyar is:

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" Habit .—Settled tendency or practice, mental constitution. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by ' habit ' and ' habitually ' imply frequent practice or use."

" Habitual .—Constant; customary; addicted to a specified habit."

11. This Court in Vijay Narain Singh v. State of Bihar, 1984 (3) SCC 14 considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows:

"The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit."

The expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter. (See Vijay Amba Das Diware v. Balkrishna Waman Dande, 2000 (4) SCC 126)

12. The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word "habitually" means "usually" and "generally". Almost similar meaning is assigned to the word "habit" in Aiyar's Judicial Dictionary , 10th Edn., at p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, 1995 (3) SCC 237).

13. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there

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should be continuity in the commission of those offences. (See Ayub v. S.N. Sinha, 1990 (4) SCC 552)

14. From one single transaction though consisting of several acts, a habit cannot be attributed to a person."

8. That apart, the Apex Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU, referred supra, held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

9. The above ratio laid down by the Apex Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU, referred supra, was subsequently followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

10. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. As rightly pointed out by the learned counsel for the petitioner, in the instant case, six adverse cases relate to the offence punishable under Section 379 I.P.C., whereas there is only one solitary instance, viz., the ground case, where the detenu had robbed in the public. In view of the decision in R. Kalavathi v. State of T.N.,(2006) 6 SCC 14, from one single transaction, though consisting of several acts, a habit cannot be attributed to a person, and the stand taken by the detaining authority that the detenu is habitually committing crime and acted in a manner prejudicial to the maintenance of public order cannot be sustained. Moreover, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. We are of the considered opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the case on hand.

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For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 21.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

sasi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint George,
Chennai-9.

3.The Commissioner of Police
Chennai Police, Chennai.

4.The Public Prosecutor
High Court, Madras.

5. The Superintendent,
Central Prison, Puzhal, Chennai.

BS(CO)
dcp/16.11

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